IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05/12/2002

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice K. GNANAPRAKASAM

Civil Miscellaneous Appeal No. 1321 of 2000
and
C.M.P.No. 12553 of 2000

Rani ..... Appellant/Respondent.

-Vs-

M. Mohan. ..... Respondent/ Petitioner.

Appeal against the order and decree dated 14-6-2000 and made in F.C.O.P.No. 902 of 95 on the file of the Principal Family Court at Madras.

!For appellant: Mr. Anbarasu.

^For respondent: Mr. S. Krishnasamy.

:JUDGMENT

(Judgment of the Court was made by P. Sathasivam, J.)

Aggrieved by the order of the Principal Family Court, Madras dated 14-06-2000 made in F.C.O.P.No. 902 of 95, granting Divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955, wife has filed the above appeal before this Court.

2. The respondent herein-husband filed F.C.O.P.No. 902/95 on the file of the Family Court, Madras seeking dissolution of their marriage dated 02-03-94 by a decree of Divorce on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act. In the petition it is stated that the marriage between the petitioner and the respondent was performed on 2-3-94 at Parvathy Ramaswamy Kalyana Mantapam, Anna Nagar, Madras-40 according to Hindu rites and ceremonies. Subsequent to the marriage, they commenced the matrimonial life at No.36, Bashyam Reddy 2nd Street, Ottery, Madras-12. According to the husband, on the very next day of the marriage her wife demanded a sum of Rs.1,000/- for purchase of a wrist watch for her sister. When he asked for reason, she insulted him by using filthy words. It is further stated that she used to quarrel with him often and thereby causing mental agony. She did not even cooperate with him not only in matrimonial matters, but also in house-hold affairs. She informed that she was very friendly with one Ramesh

prior to the marriage and she openly said that she was very eager to marry him. She did not even inform him the birth of a child. Even her parents did not inform about the birth of the child either to him or to the elders of his family. In the light of her attitude, her husband issued a notice on 29 -7-95 through his advocate calling upon her to give consent for divorce. Though the notice was duly received by her, she neither complied with the demand made in the notice nor sent any reply. Hence the husband filed the petition for divorce.

3. The wife filed a counter statement disputing various averments made by her husband. Apart from denying all the averments, it is stated that she wrote 4 letters to her husband, but he has not replied to the same and not taken any effort to take her back to the matrimonial home. When she visited her husban d's house on 15-8-95 along with her parents, because of his attitude, they returned to the home. Even though she is eager to live with him, he has not taken steps to take her and the child back.

4. Before the Family Court, the husband was examined as P.W.1 and marked 2 letters, legal notice and acknowledgment as Exs. P1 and P-4. The wife was examined as R.W.1 and no document was marked by her. The learned Principal Judge of the Family Court, after considering all the materials, granted a decree for Divorce on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act and dissolved the marriage solemnized on 02-03-94 at Madras. Questioning the said order, the respondent therein-wife has filed the above appeal.

5. Heard the learned counsel for the appellant as well as respondent.

6. The only point for consideration in this appeal is whether the appellant herein/petitioner therein has made out a case for Divorce on the ground of desertion under Section 13 (1) (i-a) of the Hindu Marriage Act; and whether the Family Court is right in granting the decree for Divorce.

7. For convenience, we shall refer the parties as arrayed before the Family Court. It is the case of the petitioner/husband that the marriage between the petitioner and the respondent took place on 2-3-94 at Madras according to Hindu rites and customs and it was an arranged marriage by the elders. A female child was also born to them and at the time of filing of the petition, she was aged about 5 years. He is living with the respondent along with his 72 years old mother only for 80 days. He narrated in his petition as well as deposed before the Court that on the next day of the marriage, the respondent demanded a sum of Rs.1,000/- for purchasing a wrist watch for her sister and when he asked for the reason thereof, she insulted him by saying "You are unfit to be a man. Are you not ashamed". It is his specific case that the respondent has caused mental agony and cruelty to the petitioner. It is also his case that the respondent used to quarrel with him for trivial matters and never used to cooperate with him for matrimonial matters and did not even take care of cook food for the petitioner and his family members. The petitioner has specifically alleged and also deposed before the Court that the respondent went to the extent of saying that she did not like the marriage with the petitioner and she divulged to the petitioner that she was forced to marry him

and that the marriage was only an accident in her life. It is stated that she openly declared that she was friendly with one Ramesh prior to the marriage and in fact she was very eager to marry him. He further deposed that the respondent very often used to compare him with Ramesh and frequently states that in all respects he is inferior to the said Ramesh. After one month, when he pointed out that "this is the same day when our marriage was celebrated last month", she remarked the petitioner "that was the saddest day in her life" and further added that but for that marriage, she would have been happy with her friend Ramesh. With reference to the above specific averments, as rightly found by the Family Court, the appellant/wife has not deposed anything in her evidence to disprove the incident as claimed by her husband, except her bald denial in the counter statement. In other words, she has not deposed anything in her evidence about the facts mentioned above by her husband to prove that she has not committed any such act of cruelty against him and his family members and relatives.

8. It is the further case of the respondent herein that when he refused to leave his aged mother to come along with her and when the request was declined, according to him, she time and again blackmailed him by saying that she would commit suicide by pouring kerosene on her and thereby making him to face the onslaught of criminal proceedings. Here again, as rightly observed by the Family Court, though she has stated in her counter that she has not made any attempt to commit suicide, but in her evidence she has not denied her statement or explain the same. We are satisfied that the respondent herein in his petition and evidence has specifically stated that his wife threatened him that she would commit suicide by pouring kerosene on her and thereby caused mental agony and cruelty to him.

9. It is also the grievance of the respondent herein that the appellant never behaved like a dutiful wife at any time and on 1-9-94, she left the matrimonial home on her own accord without any intimation or prior permission from the family members and took with her all the jewels presented at the time of marriage by her parents for her delivery. It is also his grievance that even after the birth of the child, neither the appellant nor her family members informed about the birth of a child. It is also his case that he was not allowed to visit her parent's house. However, it is the case of the appellant/wife that though she wrote a letter to the respondent herein on 5-9-94 and thereafter four letters to him and again a letter on 8-9-9 4, as rightly observed by the Family Court, she has not produced copy of the said letters or evidence in support of her claim.

10. The other relevant circumstance to be noted is that the respondent/husband has stated that due to ill-treatment and mental cruelty caused by the appellant-wife, he issued a legal notice on 29-7-95 which has marked as Ex.P-3 calling upon her to give her consent for Divorce. The said legal notice was acknowledged by her and the acknowledgment has been marked as Ex.P-4. We have perused Ex.P-3 legal notice dated 29-7-95. As rightly stated, in this legal notice the respondent herein has given all particulars and details from the date of marriage till the date of separation of the appellant herein from the matrimonial home and the fact that he has requested her to give consent for filing a petition for divorce by mutual consent before

the Court. In spite of all those details and having acknowledged the notice-Ex.P-3, it is not clear why the appellant herein did not send reply for the same highlighting her stand. We have already referred to the fact that Ex.P-3 contains the entire facts of his case including the request of the respondent herein made to the appellant/wife to give consent for divorce. Inasmuch as the appellant has not given any reply even after receipt of the notice, we are of the view that the respondent herein is right in presuming that her wife is not interested in living with him to lead a normal happy married life which necessitated him to file the petition for divorce on the ground of cruelty. In the absence of any explanation for not sending reply, there is no reason to reject the case of the respondent herein as explained in Ex.P-3. Likewise, though the appellant-wife has stated that the respondent has visited her house along with his relative to kill her, except her statement, the same has not been substantiated by examining any one of the elders who were present at that time. In the absence of examination of at least one or two persons, the case of the appellant is liable to be rejected.

11. The other material to be considered is Exs.P-1 and P-2. Ex.P-1 is an undated letter written by the appellant to the respondent herein. Ex.P-2 dated 12-7-94 is another letter written by the appellant to the respondent herein. At the request of the counsel for both parties, we have carefully perused both these letters. A reading of Ex.P-1 shows that the appellant has written and abused the respondent herein in a derogatory manner in filthy language without giving respect to him. On the other hand, in Ex.P-2 dated 12-7-94 in categorical terms she conveyed her intention to live separately from him and she also requested him to get a divorce from her through her relatives or Court. Though the learned counsel appearing for the appellant by drawing our attention to the initial in Exs. P-1 and P-2, has contended that both letters were not written by her but the same were created, concocted and forged by the husband to get divorce, after verifying the signature, initial etc., and also of the fact that the appellant herself admitted in her evidence that she wrote 4 letters, as rightly observed by the Family Court, we are satisfied that both Exs. P-1 and P-2 letters are valid documents, written by the appellant herein. We have already referred to the fact that in Ex.P-2 the appellant has asked the respondent herein to give divorce. Another incident to be noted is that if the appellant is really interested in living with her husband, she need not have filed M.C.No. 350/96 claiming maintenance even on 1-10-96. As per the orders of the Court, it is the case of the respondent herein that he has been paying maintenance at the rate of Rs.300/- per month to the first petitioner therein and Rs.250/- per month to the second petitioner therein with effect from 1-5-97. As rightly observed by the Family Court, if the appellant is really interested and ready and willing to live with her husband, there is no need for her to claim maintenance. Taking note of all the aspects, more particularly using filthy language against her husband, and threatening him that she would commit suicide by pouring kerosene, we are of the view that these acts of the wife might have undoubtedly caused cruelty and mental agony to the respondent herein. We have already referred to the fact that the appellant herself conveyed her willingness for divorce in Ex.P-2. Likewise, we have already referred to the fact that for the legal notice-Ex.P-3, wherein entire facts are narrated for divorce, the appellant-wife did not send reply for the same, accordingly it is

presumed that she is willing for divorce as requested in Ex.P-3. Further, even according to the Family Court, both the husband and wife are living separately for more than 6 years and their relationship had broken down irretrievably and there is no possibility of any reconciliation between them. Same position continues even after two years viz., after th e decree for divorce. Therefore, we are of the view that the marriage between the appellant and the respondent was dead and there is no chance of being retrieved. From the materials placed before the Family Court, we are satisfied that the respondent herein has made out a case for divorce on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act and the same has been rightly granted by the Family Court. In the absence of any other material, we do not find any ground for interference. On the other hand, we are in agreement with the conclusion arrived at by the Family Court; consequently the appeal fails and the same is dismissed. No costs. C.M.P.12553/200 is also dismissed.

R.B.

Index:- Yes
Internet: Yes.

To:-
1) The Principal Family Court, Madras.
2) The Section Officer, V.R Section, High Court, Madras.